

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

[1] PATRICIA ANN LAWSON)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-1029-C
)	
[1] AMERICAN BANKERS INSURANCE)	Case No. CJ-2016-0145
COMPANY OF FLORIDA,)	(McClain County District Court)
)	
Defendant.)	

NOTICE OF REMOVAL

COMES NOW American Bankers Insurance Company of Florida (“ABIC”), the Defendant herein, by and through counsel, in accordance with applicable law, including but not limited to, 28 U.S.C. §§ 1332, 1441 and 1446 appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure, and hereby gives notice of the removal of this action from the District Court in and for McClain County, Oklahoma, to the United States District Court for the Western District of Oklahoma, and in support thereof would show unto the Court the following, to wit:

1. This action was commenced by the filing of a Petition being Case No. CJ-2016-0145 in the District Court in and for McClain County, Oklahoma, a court within this judicial district.

2. Copies of all process, pleadings and orders on file in said state court are attached hereto. (Docket Report [Ex. 1]; Pl.’s Pet., July 29, 2016 [Ex. 2]; Mansell’s Entry of Appearance, July 29, 2016 [Ex. 3] Cole’s Entry of Appearance, July 29, 2016

[Ex. 4]; Summons, July 29, 2016 [Ex. 5]; Engel's Entry of Appearance, August 19, 2016 [Ex. 6])

3. This Court has diversity jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332 because the parties properly joined and served are completely diverse, and because the amount in controversy exceeds \$75,000.00.

4. This Notice of Removal has been timely filed within thirty (30) days after receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. This notice of removal is being filed less than one year since the commencement of the action.

5. Contemporaneously with the filing of this Notice of Removal, a copy of this Notice is being filed with the District Court in and for McClain County, Oklahoma, and is being served upon counsel of record.

DIVERSITY JURISDICTION

6. This case is properly removable pursuant to 28 U.S.C. § 1441, which provides in pertinent part as follows:

(a) Generally. — Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

7. This action is properly removable under 28 U.S.C. § 1441(a) and (b) because this United States District Court has original jurisdiction of this case under 28 U.S.C. § 1332(a), as amended, which provides in pertinent part as follows:

a. The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and cost, and is between - -

i. Citizens of different states

A. DIVERSITY OF CITIZENSHIP

8. There is a complete diversity of citizenship between the Plaintiff and the Defendant.

9. Plaintiff's Petition refers to "Plaintiff's mobile home, adjacent structures and personal property under a "specialty homeowners program' insurance policy number GT89044985." (Pl.'s Pet. ¶ 1, at 1 [Ex. 1].) Said insurance policy, Policy Number GT89044985, names the Plaintiff as an additional insured and lists her address and the insured address as 19603 Happy Trails, Blanchard, Oklahoma 73010. (*See* New Declaration for ABIC Policy GT89044985 at 1, June 17, 2015 [Ex. 7].) Therefore, for purposes of diversity jurisdiction, Plaintiff is deemed to be a citizen of Oklahoma.

10. American Bankers Insurance Company of Florida is a corporation organized and existing pursuant to the laws of the State of Florida, with its principal place of business located in the State of Florida. (*See* Fla. Dep't of State, Div. of Corps., Detail by Entity Name for Am. Bankers Ins. Co. of Fla., <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=AMERICANBANKERSINSURANCEFLORID%200182960&aggregateId=domp-018296-b21d7d64-e384-42eb-b128-817b1488cbb8&searchTerm=american%20bankers%20insurance%20company%20of%20florida&listNameOrder=AMERICANBANKERSINSURANCEFLORID%200182960> [Ex.8].)

Under section 1332(c)(1), "a corporation shall be deemed to be a citizen of every State

and foreign state where it has its principal place of business” Therefore, ABIC is a citizen of the State of Florida for diversity jurisdiction purposes.

B. AMOUNT IN CONTROVERSY

11. In a diversity action where a single plaintiff has multiple claims against a single defendant, and the claims are of such a character that they may be properly joined in one suit, the aggregate amount thereof is, for the purpose of Federal jurisdiction, the amount in controversy. *Alberty v. Western Sur. Co.*, 249 F.2d 537, 538 (10th Cir. 1957); *Chidester v. Kaz, Inc.*, No. 4:07-cv-00084-CVE-PJC, 2007 WL 1087728, at *3 (N.D. Okla. Apr. 9, 2007). Claims for punitive damages may be considered in determining the amount in controversy. *Jones v. Farmers Ins. Exch. of Los Angeles, Cal.*, 112 F. Supp. 952, 954-55 & n.7 (W.D. Okla. 1953) (citing *Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943)); *Burris v. Ocwen Loan Servicing, LLC*, No. 5:16-cv-00120-R, 2016 WL 2622016, at *3, (W.D. Okla. May 6, 2016). Claims for attorneys’ fees may also be calculated as a part of the amount in controversy in a bad faith case. *Slover v. Equitable Variable Life Ins. Co.*, 443 F. Supp.2d 1272, 1277 (N.D. Okla. 2006); *In re Gen. Motors Corp., “Piston Slap” Prod. Liab. Litig.*, No. 5:04-MDL-01600-H, 2005 WL 1606445, at *4 (W.D. Okla. July 6, 2005).

13. In cases removed to federal court based on diversity jurisdiction, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy” 28 U.S.C. § 1446(c)(2); *see also Rocket Oil & Gas Co. v. Ark. La. Gas Co.*, 435 F. Supp. 1306, 1306 (W.D. Okla. 1977). Where it is clear from the face of the petition that the Petition seeks in excess of \$75,000.00, the amount in controversy requirement is satisfied.

14. It is apparent from the face of Plaintiff's Petition that Plaintiff seeks actual damages, punitive damages and attorney fees. The Petition states that "Plaintiff has suffered the loss of policy benefits, economic and consequential damages, emotional and mental distress and embarrassment." (Pl.'s Pet. ¶ 7, at 3 [Ex. 2].) The Petition further states that the "Plaintiff is entitled to punitive damages." (*Id.* ¶ 8, at 3 [Ex. 2].) Finally, in its prayer, the Petition "prays for judgment . . . for [Plaintiff's] damages, both compensatory and punitive damages, with interest and costs of this action, for a reasonable attorney fee, and for such other relief as may be appropriate . . . [all] in excess of the amount required for diversity jurisdiction pursuant to § 1332 of Title 28 of the United States Code." (*Id.* at 3 [Ex. 2].)

CONCLUSION

WHEREFORE, for the reasons stated above, there is complete diversity of the parties named in this lawsuit. Also, as demonstrated above, the amount required for diversity jurisdiction is clearly satisfied based on the face of Plaintiff's Petition. Thus, diversity jurisdiction is present in this case. Consequently, Defendant requests that this Court proceeds with the handling of this case as if it had been originally filed herein, and that further proceedings in the District Court in and for McClain County, Oklahoma, be hereby stayed.

This, the 6th day of September, 2016.

Respectfully submitted,

s/ Marty R. Skrapka

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***ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that on the 6th day of September, 2016, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing, and transmittal of a Notice of Electronic Filing was sent to the following ECF registrant:

Steven Mansell
Mark Engel
Kenneth Cole
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ATTORNEYS FOR PLAINTIFF

s/ Marty R. Skrapka

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